

PROCEEDINGS OF THE BOARD OF HEALTH MEETING
Tuesday, March 11, 2014
5:00 PM

Present: J. Tibbetts, MD, Harold Pfothhauer, Audrey Murphy, Susan Paulus Smith, Joe Van Deurzen

Staff Present: Judy Friederichs, Rob Gollman, Patti Smeester (note taker), Ann Steinberger and Jane Weber

Guests Present: Juliana Ruenzel, Corporation Counsel, Tony Loritz of Sanimax, Josh Koch of Conway, Olejniczak & Jerry Law Firm, Larry Collins of JBS, Hank Bongers of AFG

1. CALL TO ORDER, INTRODUCTIONS AND APPOINTMENT STATUS

Audrey introduced the new Board Member, Susan Paulus Smith. She is a registered nurse with a background was in chemistry. Currently she volunteers at the NEW Community Clinic as a Registered Nurse on Wednesdays and is also full time at Bellin College of Nursing in their graduate program.

Board members and staff introduced themselves.

2. APPROVAL / MODIFICATION OF THE AGENDA

MOTION: To change the agenda to interchange items 4 and 5. Murphy / Tibbetts
MOTION CARRIED

3. APPROVAL OF MINUTES of September 10, 2013

MOTION: To approve. Van Deurzen / Pfothhauer
MOTION CARRIED

4. Odor Complaints/ Ordinance Review

Judy indicated that we were asked at the last Human Services Committee meeting to have the Board of Health revisit the ordinance as it relates to individuals who call in complaints but are passing through an area. Corporation Counsel Juliana Ruenzel is present to address the legality of such a change. Rob explained traveling individuals are smelling odors and want to report it. Rob explains to the individual that the current interpretation of the ordinance is that we provide follow-up to complainants who are complaining from their residence property or are businesses who register complaints and are onsite during their work hours.

Juliana explained that when someone wants to bring an action they have to have a personal stake. People who are visiting Woodman's for example and call in complaints are not taken as seriously because they can go to another grocery. An employee, on the other hand, has more standing to call in and complain because they don't have choice because this is where the job is. The court looks at considerations as the number of people affected, the business, where it is located, is it an industrial business, is there a residence close by, and who was there first.

Case law says that you have to prove not only does that odor bother you, but there has to be some kind of injury. It has to affect your quality of life and it wouldn't do that for someone that is just passing through. It is somebody that is truly affected on day to day operation, their lifestyle is affected, and their health might be affected by whatever the odor is. If you change the ordinance, the enforcement is questionable.

Audrey informed Juliana that we currently have two citations that are lingering in the Circuit Court and there has been no action at this time. Rob indicated that March 18th is the next court date. Juliana was unaware of a court date. Juliana indicated that the DA had called her and under 978.05 of the Wis. Stats, the DA did not want to prosecute. He claims under this statute he does not have authority. The DA also says he has prosecutor discretion so he can choose when he wants to prosecute or not. Juliana's understanding from the DA was that these two citations were on hold and she didn't realize there was a court date. The DA sent his file over to Juliana. Juliana would have to go to the board to ask permission to prosecute these. At this point, Juliana doesn't know if she has that authority. Juliana is going to check on that court date. Juliana's opinion on who has the ability to enforce these is the DA does. The DA has been handling county forfeiture actions for a long time. She thought the citations were being held pending the cooperation of Sanimax with the Human Services Committee and they were cooperating with the committee so she is surprised that there is a court date.

Juliana will appear at the March 18th court date on behalf of the board and for the county. Audrey indicated we put ordinances in place to promote health and quality of life in our county. The board has statutory powers to do that and we have worked hard and long on this ordinance which was revised once already. We also had legal counsel working with us and we struggled for about 9 months to a year to put something good in place. To hear that the DA doesn't want to enforce this is rather discouraging. Whether an odor is criminal or not, she can make the argument that the DA always did the prosecution for the County on the ordinances. But Juliana doesn't know if it is worth the fight. She would probably be better off prosecuting it herself. Audrey asked if any other board members had any questions. Joe Van Deurzen asked if this could go into municipal codes. Juliana stated our code is a municipal code. Juliana indicated that when you talk about cities, their ordinances are under the municipal court. It depends on how the complaint is formulated whether it goes to municipal court or not. Juliana indicated we could bring something like this under a municipal court jurisdiction. The current action will stay with the Circuit Court, since it started there. Since our ordinances generally have been prosecuted by the DA, he would bring them in Circuit Court because he is a state employee. Judy asked if the

action in Circuit Court could go to Juliana. Juliana indicated she does not have the background to do criminal law. Her career has been in civil matters. She wouldn't want to attempt criminal.

Juliana recommends that we do not include a passerby as it won't make our ordinance any stronger. It's not going to really do anything and will make more work. It is not efficient. The enforceability is questionable when you start doing that.

Audrey asked if Rob had any questions. Rob addressed the possible change from three verified complaints down to two verified complaints. Rob asked Juliana's opinion if that would be a tough legally defensible position? Juliana said the court will look at the number of people affected. She stated that the more complaints, the stronger the case. Your issue is in measurement and whether it affects the ordinary sensibilities of an ordinary person. The complaints don't have ratings anymore. It just says odor verified, not verified. There is an argument to be made that a slight odor is not going to affect anyone. How is anybody injured? The slight odor may not prevent them from using their property. Judy indicated it had been changed back because it caused confusion because the violation is based on the presence of odor or not. We weren't making decisions on the rating scale; that is why we took it out. Juliana thinks it is important to note the level of odor. Juliana thinks it is important to establish that it adversely affected the person. Juliana thinks it is more helpful for the prosecutor. Juliana explained that the attorney will ask questions like: "how was the odor to you (the san)?", "was it slight?", "did you get a headache from it?" etc. Judy indicated there was a suggestion on the Human Services Committee that we actually use it to determine a citation. We were very uncomfortable with that as a subjective factor. We pictured ourselves in constant conflict with the complainant and the company. Rob asked who makes the determination as to intensity. Is it the sanitarian or is it the complainant? Juliana indicated the sanitarian makes the determination on the severity because they are used to going out there and they know what it smells like. The sanitarians are the constant. Rob has been asked to look at a device that supposedly quantifies the odor by dilutions; it is still subjective. Studies indicate it could still be a 30% difference between two people. Rob indicated all the sanitarians are uncomfortable with determining the level. Juliana indicated that if the sanitarian says on the stand that there was an odor and if she asks how strong that odor was and the sanitarian says I can't tell you that because it is subjective, we will lose the case. You have to prove that there was an adverse effect. The more people that are affected and coming forward the more chance you would have of winning.

Juliana asked what the goal is with Sanimax. Joe indicated for no smell. Judy indicated for remediation. Juliana asked by citing Sanimax, do we think that will deter them; we are better off working with them. Juliana will prosecute if we want her to, but the idea is for compliance. Juliana understands Sanimax is working with the county.

Audrey indicated that Sanimax has let the health department know of their remedial actions and also when they have broken down. There has been cooperation on their part. We would like to see the odor to go away if at all possible. Dr. Tibbetts lives in the

area and he indicates that the rancid smell is terrible and no one would want to be outside. The bone meal smell is tolerable. Dr. Tibbetts thinks there is industrial perfume afterwards.

Juliana indicated that if the DA made a deal with them she has to honor it. Juliana will find out more details. She will find out the requirements which put a hold on those citations. Juliana said the DA came in and said he made a deal and it was on hold. Her impression was that as long as they report quarterly the citations would be on hold. Dr., Tibbetts asked what authority the DA has to do that and Juliana indicated that the DA has prosecutor discretion.

Audrey asked if anyone had any more questions. Rob asked if we should start quantifying subjectively, could Juliana give us some idea of what should be on the form. Juliana indicated that you would have to describe the odor. Rob indicated we will have to use the same descriptors for all the sans. Juliana wants us to be able to come to court to help the court understand the odor, and how the odor has affected people adversely. Judy did indicate that we have had citations successfully prosecuted in the past. Audrey indicated the board is pro-business and we appreciate how important business is to this County. We do not want anyone to leave the community or hurt them in any way; we just want them to comply with a reasonable ordinance. .

MOTION: On recommendation of Corporation Counsel, that the Board of Health does not support change of our ordinance as it relates to individuals with no property interest. Van Deurzen/ Pfothner
MOTION CARRIED.

Juliana will check on the citations and report back to Judy so Judy can let the board know.

Audrey asked if the public would like to speak. No one wished to speak so the meeting continued.

Rob asked for suggestions for the quantification measures. Judy indicated we had slight, moderate and strong with ranges from 1 to 10 previously. Rob has reservations of going down that path. Dr. Tibbetts indicated there should be descriptive words. Rob indicated this isn't the Sanimax odor ordinance; these measures apply to all residents of Brown County. All will be subject to this citation and scrutiny, whether someone has a burning barrel, campfires or fireplaces.

Harold asked when Rob investigates a complaint; does the person making the complaint sign the complaint? Rob said they do not sign but they get contact information. They have told individuals that their complaint is not valid without contact information, and the defending party has a right to challenge the accuser.

Rob explained there was a presentation from a company that works with odor mitigation. The company spoke in generalities, but it is not going to be an easy thing to

solve. Rob indicated it is the material that they are processing. JBS is a kill process facility and the product that they process is fresh. Sanimax has product that ages over time and is brought in from different facilities; organic acids develop. They have more challenges than JBS. There were issues with scrubbers and chemicals. Rob thinks they have been trying. He indicated Sanimax will never be totally odorless. Certain compounds are detectable in parts per billion, as indicated by a chart that was seen at the odor mitigation specialist presentation; it is impossible to scrub down to that level. At the last HS committee meeting, Don Johnson offered to invite the corporate head to make a presentation in 3-4 months.

Susan asked if the Oneida Tribe has any response to this. To Rob's knowledge they do not do anything with odor. Audrey asked if we are getting complaints from the Village of Howard since the stack when up higher. Rob indicated we are. Rob indicated that the staff are spending a lot of time on this; the division is not getting program objectives met in licensing. The department is hiring an additional staff person to respond to these complaints, among other responsibilities. Dr. Tibbetts indicated that Don Murray made a comment at a meeting about not actually having the sanitarians respond given that this was a nuisance rather than a health issue. The department is collecting applications for a bilingual health aid position and Rob's plan is to send this paraprofessional out to respond to these calls.

Audrey asked if there as anything further. There were no further comments.

5. Annual Election of Board of Health Chairperson, Vice Chairperson per Chapter 35.01 (5) of the Brown County Code of Ordinances

Audrey stated that, by state statute, the board must elect a chair and vice-chair each year.

NOMINATE/ELECT: Audrey Murphy for Chairperson. Van Deurzen/Pfotenhauer
MOTION CARRIED.

NOMINATE/ELECT: Dr. Tibbetts for Vice Chairperson. Van Deurzen/Paulus-Smith
MOTION CARRIED.

6. Correspondence Received. - none

7. Approval of Proposal (post budget) for Increase in Well Testing Fee and Temporary Campground Permit (process recommended by auditor starting in 2014).

Judy indicated that during an audit there were some fees on our list which did not match what we were actually charging. Judy explained that we were told by corporation counsels in the past that the budget is only an estimate of expenses and if we find that a certain service costs more, we could change to a more appropriate fee. The auditor agreed, but recommended that to protect ourselves when we find the need to make a change, that we bring the change to the BOH so at least we have a record

and process to change fees. Joe Van Deurzen questioned why we are only raising the well testing fee by \$1.00 which is about \$106 more revenue for in county and \$32 for out of county; it is such a small amount of money. Rob indicated that John Paul made the price change last year and we have been charging it and need Board approval. Joe Van Deurzen questioned the actual cost of the well testing. Rob indicated we do not have good number, but that costs went up about 9.5% for supplies and mailings. . Judy indicated according to statutes we are to charge a reasonable fee based on our expenses. Rob thinks we have enough supplies for four months. There is only one company that produces and since we don't have an autoclave anymore, we are using disposable. Joe asked if we could justify the increase in cost just in labor. Judy indicated that going disposable did reduce staff time. Rob thinks we also have a reduction in labor cost because we have a new technician who is making less than the former technician. Joe indicated that each year we fight in order to get enough tax dollars to support the operation through the fees. The fees should cover all our costs. Joe suggested a \$4.00 increase. Rob thinks we are competitive and Joe wondered who our competition is. Outagamie County charges \$30.00. Joe believes we certainly can justify the cost; he believes we should charge \$30.00 for both in and out of county.

MOTION: To adjust the testing fees for wells within Brown County and outside of Brown County to be \$30.00 from today on. Van Deurzen/Pfotenhauer

Audrey asked Judy if she had an opinion. Judy asked if Rob was comfortable with keeping the fees the same and less complicated by charging the same for in/out of county. Audrey has a concern going from \$24 to \$30. Other members commented that if we can justify \$31.00 for out of county residents we can justify the \$30.00 across the board.

MOTION CARRIED. Audrey was opposed.

Temporary campground permit – Rob indicated we do not have a temporary campground fee. Rob received a call from Doug Hartman of the Parks Dept. asking if we could offer a temporary campground permit. Doug received a request from the boy scouts to use on of the parks for tent camping. Rob indicated that several other health departments do offer temporary campground permits. Rob indicated the requirements are fairly minimal; they must have potable water, some sort of toilet facility; adequate trash receptacles, etc. Joe asked if we have rules and regulations on temporary campground permit that could be incorporated in this. Rob indicated Bay Shore Park has a regular campground license. These fees are fairly similar to what the regular permit fees are for a campground. We inspect campgrounds once a year but this new permit allows a park to have a campground without having all the infrastructure of a special event. There are guidelines written in stone for a regular permit. We do not allow temporary campground permits right now. This would be a completely new license. Audrey asked if we had staff to do this. Rob did not see this as something that will take up a lot of time. Harold asked about liability. Rob said we will issue the permit but the Park Department has to give them the permission to set up the space. Rob

assumes there will be a contract with the Park Department. Rob's recommendation is to move.

MOTION: Motion to create a temporary campground permit with the fee schedule proposed. Van Deurzen/Murphy.

MOTION CARRIED.

8. Educational Presentation

Ann Steinberger did a presentation on HIV, Partner Services.

9. Director's Report.

Communicable Disease Report: We had 12 gastro-intestinal outbreaks, mostly norovirus, involving 214 people, since the first of the year. There was a respiratory outbreak involving 13 people, which was not influenza. Influenza hospitalizations are finally on the decrease, with 34 cases in January, 7 cases in February and 1 case in March so far. Provisional communicable disease data for December was distributed..

Rob presented the annual report data for the laboratory. Municipal water samples are taken by the GB Water Utility that we process. We test all licensed pools monthly. River and bay water testing was part of the beach monitoring program, which Rob doesn't think we will be continuing as he does not have solid information from the state and there will be no funding available. We will continue to process samples for Ashwaubamay and City of Green Bay. We have supplies left and they collect the sample and drop it off and we process/ read it.

Blood processing in conjunction with the Nursing Division Report: Our lab tech takes care of blood processing, sputum and stool. Proficiency tests are part of our requirement as is quality assurance.

We submit the bird specimens for West Nile until we get a positive test result and the program is discontinued. We have had West Nile Virus present in this area.

Swabs Report: We do testing for listeria at several licensed establishments at the request of the Dept. of Ag.

Rabies Report: We process specimens for submission to the state lab of hygiene. If a vet calls and says there is a cat involved in a bite case and has neurological symptoms, the vet will send the decapitated head to us for processing. We also submit bats. Joe asked if they were brought in dead. Rob indicated that they are not brought in dead all the time. Rob asked if Dr. Tibbetts could get florane or halothane. We currently use chloroform which is dangerous and we don't have a functioning vent in the lab. Rob wants to change how we euthanize. Rob concluded his report. Audrey asked if there were any further questions.

Judy continued her Directors Report.

Paid adult vaccine report: We have been down to two paid adult vaccines. We were still offering Hep A and Hep B to adults. The cost was \$40-\$45. The main people we were immunizing were those on medical assistance who can get it privately. When we try to bill the HMOs, the majority only reimburse us a few dollars and we are losing money. Once we use up our supply, we will discontinue offering it. These are vaccines we purchase. The other vaccines are biologicals we get from the state and they have different criteria and are provided without cost.

Building issues report:

On February 10th and 11th the building had no water because of frozen pipes. Judy talked with Administration, HR and County Executive and it was determined that we should relocate some staff in Northern Building, Technology Services training room, and send the remaining staff home. We called all staff back the following day by noon. The Water Department determined it was the pipes from the building to the street.

On the Friday February 14, WIC called the police due to an altercation with a man in their office and in the interim asked for support from male staff at the health department. One of the department staff was subsequently approached in the parking lot by the same person. The police and ambulance came and removed the apparently intoxicated man and a friend. Judy sent a written summary of the event/ future SOPs to the Executive, HR and Administration. The County Executive requested that Sheriff's and Facilities departments work with health on solutions. A meeting subsequently occurred with the property manager, facilities, La Force, WIC and some of our staff. Various environmental improvements such as lighting, better doors/locking systems, intercom systems and security cameras were discussed and quotes/alternatives will be explored

Safety committee updates: Department is updating safety policies and procedures and reviewing the alert system. We are talking about having guests sign in and stay in certain designated areas to control access areas.

Infrastructure/Quality Improvement Grant:

The department was awarded an infrastructure/quality improvement grant for January to September 2014. The grant activities are part of a national voluntary accreditation process. The three objectives include: performing a self-assessment of our strengths/weaknesses related to the essential services of public health, developing a plan to improve our weaknesses, and implementing one improvement plan. A health educator will staff this program .

Recruitment Report: We are soon interviewing for a Nurse Manager, Hmong health aide, and sanitarian. Hispanic health aide interviews are not yet scheduled. School nurse position has not been posted yet.

Strategic planning process report: We yet need to do a SWOT/strategic issues survey with our stakeholders. This survey will go out this month.

Preparedness: Exercise & Do-1-Thing Project – March 25th event is a weather hazard (tornado) virtual exercise in the EOC. We will have Kewaunee, De Pere, Oneida and Brown County representatives present. The Do-1 thing Project will be launched on April 23 in response to the capabilities for the preparedness grant. Community providers will choose a different preparedness topic to roll out to the community/month.

CHIP Judy distributed the Annual Report for CHIP Improvement Process.

State Audit Every five years, public health agencies are audited by the state to see if we qualify minimally as a health agency and then as a level 3 agency. We show evidence by collecting data and presenting it to state reps sometime in fall.

10. All Other Business Authorized by Law:

Audrey stated that before the next flu season, we need to get a message out regarding infection control of flu as it relates to (avoiding) shaking hands in church. There doesn't seem to be a balanced and efficient way to get such messages out directly to churches, so the fairest and most sensitive way may be through sharing recommendations by means of a press release. The churches may not promote infection control without some direction. Judy mentioned we have a faith-based handbook re to infection control that we sent out years ago and publicized its availability. We ended up with quite a few left which we most likely discarded. We do have a disk of the handbook.

Dr. Tibbetts mentioned there is a high level of Strontium in Brown County; approximately 63% of 115 tests done have shown high levels; high levels can lead to Strontium rickets. Strontium is a water-soluble metal. Judy mentioned that she has spoken to the Water Department who is aware of this.

ADJOURNMENT / NEXT MEETING

The next meeting is tentatively scheduled for May 13th at 5:00 pm.

MOTION: To adjourn meeting at 8:05 PM Audrey/ Van Deurzen
MOTION CARRIED.